

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: <b>Dietz</b>	§	
	§	Group Art Unit: <b>3688</b>
Serial No. <b>10/715,062</b>	§	
	§	Examiner: <b>Lastra, Daniel</b>
Filed: <b>November 17, 2003</b>	§	
	§	Confirmation No. <b>5391</b>
For: <b>Dynamic Web Page Construction</b>	§	
<b>Based on Determination of Client</b>	§	
<b>Device Location</b>		

**35525**

PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**REPLY BRIEF (37 C.F.R. 41.41)**

This Reply Brief is submitted in response to the Examiner's Answer mailed on March 7, 2008.

No fees are believed to be required to file a Reply Brief. If any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447.

## **RESPONSE TO EXAMINER'S ANSWER**

### **General Opening Observation:**

The Examiner glosses over specific claim language, instead comparing at great length the similarities between Appellants' detailed descriptions as described in their Specification with the teachings of the cited reference. The Examiner fails to specifically show exactly where the cited reference teaches either one of (1) a **server** that *receives a request* for the web page from a first client browser, the *request including a geographic location data string* identifying a first location of the first client browser, or (2) a **server** that *dynamically builds the web page using the geographic location data string*' (that is received by the server in the request for the web page). Each of these features are specifically recited in the claims, and thus these claims have been erroneously rejected under 35 U.S.C. § 102(e) as every element recited in the claims is not identically shown in a single reference, *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (emphasis added).

### **Answer Rebuttal on page 9 pertaining to claim interpretation:**

The Examiner cites various portions of Appellants' Specification to reach the conclusion that:

The claims are "interpreted in light of Appellant's specification as simply targeting advertisements to a client's **browser** based upon said client's **browser** geographic location when said client's **browser** request a web page from a network server" (emphasis added by Appellants).

This statement in and of itself evidences that the Examiner is ignoring specific claim-based limitations, including *server*-side operations that are explicitly recited in the claims, since per the Examiner's characterization of the claims the invention is with respect to the client *browser* actions.

### **Answer Rebuttal on pages 10-12 (responding to Appellants' Brief at page 13):**

Dowling does not describe any *request for a web page* that is *received at a server* that includes a *geographic location data string* that identifies a location of a client browser. The

Examiner points to Dowling Figure 1, element 140 and 145 in an attempt to establish such a teaching. These devices are a GPS device and an antenna, and are not any type of server-performed operations/actions.

The Examiner further notes that a user is allowed to select an area of interest, which is then displayed to the user. In this scenario, the pre-existing broadcasts packets are filtered at the mobile device such that only those relevant to the users location are presented to the user. The user can then select from one of these filtered packets to request desired information. Dowling does not state that this subsequent request for information by the user using these filtered packets includes a geographic location data string that identifies a location of a client browser. Importantly, these requests would not need to contain such information due to the packet-filtering that has already occurred at the client device which has *already accounted for the user's location*, so further processing with respect to the user's location is not needed and would needless involve redundant and non-informative additional processing resources. Quite simply, the Dowling *client received packet* carries with it geographically related information (Dowling col. 4, lines 20-22), but the *server received request* does not contain a geographic location data string that identifies a location of a client browser.

The Examiner further asserts (page 11) that a *mobile user transmits a request packet indicating its interest* to the local broadcasting domain entity 150 of Figure 1. Appellants urge that such assertion does not establish any server-side operations such as a server that receives *request for a web page*, or that such request that is *received at the server* includes a *geographic location data string* that identifies a location of a client browser. Instead, it merely established an *end user transmitting a packet that indicates a user's interests*.

Still further, Dowling does not describe a server that *dynamically builds the web page using the geographic location data string* (that is received by the server in a request for a web page). Because Dowling does not teach a server that receives a request for a web page that includes a *geographic location data string* that identifies a location of a client browser, then it cannot teach any actions that occur – such as the claimed dynamic building of a web page – that use such (missing) geographic location data string. The web pages that are provided by Dowling are static, pre-existing web-pages that are retrieved using standard URL retrieval techniques (Dowling col. 4, lines 15-19; col. 10, lines 10-49 and particularly lines 40-49). They are not dynamically built by a

server using a geographic location data string that is received by the server in a request for a web page.

**Answer Rebuttal on pages 12-13 (responding to Appellants' Brief at pages 14-16):**

The Examiner's comments on these two pages focus on Dowling's *client* browser operations, and such browser operations do not establish any teaching with respect to the claimed *server*-side operations.

**Answer Rebuttal on pages 13-16 (responding to Appellants' Brief at pages 17-18):**

The Examiner discusses, at great length, the operation of Dowling's GPS device. Claim 1 is directed to server-side operations, not GPS device operations.

**Answer Rebuttal on pages 16-17 (responding to Appellants' Brief at page 19):**

The Examiner equates Dowling's geographic packet as being equivalent to the claimed cookie that provides that geographic location data string in the web page request, since this geographic packet is a type of request packet *sent by a geographic browser* to request application data such as web pages. Again, the Examiner is focused on client browser operations, whereas Claim 5 in combination with Claim 1 is directed to server-side operations. Even to the extent a server may receive such geographic packet, such assertion does not establish that this geographic packet that is received includes a geographic location data string. This Dowling geographic packet does not need to include such data string information as this Dowling geographic packet is automatically sent from the client browser as a result of previously performed packet filtering that has already determined that this particular information is desired (Dowling col. 15, lines 31-40). The reference does not describe receiving, by a server, a request for a web page, where this request includes a geographic location data string in a cookie.

**Answer Rebuttal on page 17 (responding to Appellants' Brief at page 20):**

The Examiner essentially states that an "HTTP request geographic packet" is equivalent to the claimed feature of "wherein the first client browser provides the geographic location data string in an HTML form". Appellants urge that an HTTP packet is not equivalent to an HTML

form, as those terms are commonly known to those of ordinary skill in the art.<sup>1</sup> Such assertion also does not establish any teaching of a browser providing the geographic location data string in an HTML form, as claimed.

**Answer Rebuttal on page 17 (responding to Appellants' Brief at page 21):**

The Examiner's comments regarding a third party server that is used store content does not establish any teaching that such content is used for dynamically building the web page – instead merely establishing that pre-existing, static content is 'stored'.

**Answer Rebuttal on page 18 (responding to Appellants' Brief at page 22:claim 15):**

Dowling's geographic packet is not described as including a geographic location data string identifying a first location of the first client browser – and there would be no reason for this packet to include such information as the Dowling geographic packets are automatically generated as a result of previous packet-filtering that already took into account the user's geographic location (as previously described hereinabove).

**Answer Rebuttal on page 18 (responding to Appellants' Brief at page 22:claim 21):**

Dowling's network server 125 is not described as performing any specialized dynamic building of a web page using a geographic location data string to select a given location-specific page element in response to a first request being received. Instead, this server "downloads a set of web pages containing the menus and other information" (Dowling col. 10, lines 34-39). Dowling's 'downloading' of preexisting content does not teach 'dynamic building of a web page using a geographic location data string to select a given location-specific page element in response to a first request being received', as does the claimed server of Claim 21.

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<sup>1</sup> During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). This means that the words of the claim must be given their **plain meaning** unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004). Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are **construed to mean exactly what they say**. MPEP 2111.01(I) (emphasis added by Appellants).

**Answer Rebuttal on page 18 (responding to Appellants' Brief at page 23):**

The Examiner's assertion that something is old today (or more accurately, that something was old on September 5, 2007, which was the mailing date of the Final Office Action where such 'old' assertion was made) does not comply with requisite KSR analysis as to why something would have been *obvious on the effective filing date of the present application* (September 30, 1999).<sup>2</sup>

Still further, as stated by the Federal Circuit, "virtually all [inventions] are combinations of old elements." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); *see also Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) ("Most, if not all, inventions are combinations and mostly of old elements."). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed. Cir. 1998). It is urged that the Examiner has failed to meet this burden of proof, by merely alleging obviousness because something is old (in 2007).

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<sup>2</sup> Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007) (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

## **CONCLUSION**

In closing, the server/client browser distinction described hereinabove is critical, as the present claims are specifically directed to special actions that are performed at a server in how requested information is *dynamically generated/built* in direct response to a request made by a client device/browser, whereas Dowling's system is substantially directed to details that occur at a client browser in how information is *requested*. It nominally mentions that a server 'downloads' requested, *pre-existing* information using traditional URL techniques.

/Wayne P. Bailey/

Wayne P. Bailey  
Reg. No. 34,289  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777